

1-11-2002

# "THREE STRIKES" LAW. LIMITATION TO VIOLENT AND SERIOUS FELONIES. INITIATIVE STATUTE.

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## Recommended Citation

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**BILL JONES**  
*Secretary of State*  
*State of California*

**ELECTIONS DIVISION**

(916) 657-2166  
1500 - 11<sup>th</sup> STREET  
SACRAMENTO, CA 95814  
Voter Registration Hotline  
1-800-345-VOTE  
For Hearing and Speech Impaired  
Only  
1-800-833-8683  
e-mail: [comments@ss.ca.gov](mailto:comments@ss.ca.gov)

June 21, 2002

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JUN 25 2002

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TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS AND  
PROPOSERS (02173)

FROM:

*Brianna Lierman*

BRIANNA LIERMAN  
ELECTIONS ANALYST

SUBJECT: FAILURE OF INITIATIVE #949

Pursuant to Elections Code section 9030(b), you are hereby notified that the total number of signatures to the hereinafter named INITIATIVE STATUTE with all county elections officials is less than 100 percent of the number of qualified voters required to find the petition sufficient; therefore, the petition has **failed**.

TITLE: "THREE STRIKES" LAW. LIMITATION TO VIOLENT AND  
SERIOUS FELONIES.

SUMMARY DATE: 01/11/02

PROPOSER: SAM H. CLAUDER II



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e-mail: comments@ss.ca.gov

**BILL JONES**  
*Secretary of State*  
*State of California*

January 15, 2002

TO: ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS  
(02019)

FROM:

*Brianna Lierman*

BRIANNA LIERMAN  
ELECTIONS ANALYST

SUBJECT: INITIATIVE #949 [REVISED]

**AMENDED CIRCULATION CALENDAR ENCLOSED**

On January 11, 2002, the Attorney General's office provided a revised summary for the initiative entitled, *"Three Strikes" Law. Limitation to Violent and Serious Felonies. Initiative Statute*. Enclosed is the new title and summary issued on that date. However, **the attached calendar supersedes** the circulation calendar issued on January 11, 2002. Please note that the date reflected as the first date that the proponent can begin circulating petitions has been corrected to reflect the official summary date. This supersedes the previously issued calendar dated January 11, 2002. Please discard the prior calendar issued by this office.

Pursuant to Elections Code section 336, we transmit herewith an amended copy of the calendar that pertains to the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**"THREE STRIKES" LAW. LIMITATION TO VIOLENT  
AND SERIOUS FELONIES. INITIATIVE STATUTE.**

The proponent of the above-named measure is:

Sam H. Clauder II  
12922 Harbor Boulevard  
Garden Grove, California 92840

(714) 780-8901

**#949**  
**"THREE STRIKES" LAW. LIMITATION TO VIOLENT**  
**AND SERIOUS FELONIES. INITIATIVE STATUTE. [Revised]**

**CIRCULATING AND FILING SCHEDULE**

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1. Minimum number of signatures required: ..... 419,260  
California Constitution, Article II, Section 8(b)
2. Official Summary Date: ..... Friday, 01/11/02  
Elections Code section (EC§) 336
3. Petitions Sections:
  - a. First day Proponent can circulate Sections for  
signatures (EC §336) ..... Friday, 01/11/02
  - b. Last day Proponent can circulate and file  
with the county. All sections are to be filed at the  
same time within each county (EC §336, 9030(a)) ..... Monday, 06/10/02
  - c. Last day for county to determine total number of  
signatures affixed to petitions and to transmit total  
to the Secretary of State (EC §9030(b)) ..... Thursday, 06/20/02\*  
  
(If the Proponent files the petition with the county on a date prior to 06/10/02,  
the county has eight working days from the filing of the petition to determine the  
total number of signatures affixed to the petition and to transmit the total to the  
Secretary of State) (EC §9030(b)).
  - d. Secretary of State determines whether the total number  
of signatures filed with all county clerks/registrars of  
voters meets the minimum number of required signatures,  
and notifies the counties (EC §9030(c)) ..... Saturday, 06/29/02\*
  - e. Last day for county to determine total number of qualified  
voters who signed the petition, and to transmit certificate  
with a blank copy of the petition to the Secretary of State  
(EC §9030(d)(e)) ..... Monday, 08/12/02

\* Date varies based on the date of county receipt of verification.

**INITIATIVE #949 [Revised]**  
**Circulating and Filing Schedule continued:**

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(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 06/29/02, the last day is no later than the thirtieth day after the county's receipt of notification). (EC §9030(d)(e)).

- f. If the signature count is more than 461,186 or less than 398,297 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 398,297 and 461,186 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of **all** signatures (EC §9030(f)(g); 9031(a)) ..... Thursday, 08/22/02\*

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (EC §9031(b)(c)).` ..... Monday, 10/07/02

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 08/22/02, the last day is no later than the thirtieth working day after the county's receipt of notification) (EC §9031(b)(c)).

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033)..... Friday, 10/11/02\*

**NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 5, 2002 GENERAL ELECTION:** This initiative must be certified for the ballot 131 days before the election (June 27, 2002). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions with county elections officials by April 18, 2002. If a 100% check of signatures is necessary, it is advised that the petitions be filed by February 27, 2002.

\* Date varies based on receipt of county certification.

## IMPORTANT POINTS

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- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).
- Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.



1300 I STREET, SUITE 125  
P.O. BOX 944255  
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Facsimile: (916) 324-8835  
(916) 324-5490

January 11, 2002

Bill Jones  
Secretary of State  
1500 - 11<sup>th</sup> Street, 5<sup>th</sup> Floor  
Sacramento, California 95814

**FILED**  
In the office of the Secretary of State  
of the State of California

**JAN 11 2002**

RE: Initiative Title and Summary (Revised)  
SUBJECT: "THREE STRIKES" LAW. LIMITATION TO VIOLENT AND  
SERIOUS FELONIES. INITIATIVE STATUTE.  
FILE NO: SA2001RF0043

BILL JONES, Secretary of State  
By Brianne Korman  
Deputy Secretary of State

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our revised title and summary to the proponent of the above-identified proposed initiative.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our revised title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of service.

Sincerely,

TRICIA KNIGHT  
Initiative Coordinator

For **BILL LOCKYER**  
Attorney General

TK:cw  
Enclosures



The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**"THREE STRIKES" LAW. LIMITATION TO VIOLENT AND SERIOUS FELONIES.**

**INITIATIVE STATUTE.** Amends "Three Strikes" law to require mandatory increased sentences only when current conviction is for specified violent and/or serious felony such as rape, robbery or murder. Provides that only prior convictions for specified violent and/or serious felonies qualify for second and third "strike" sentence increases. Requires re-sentencing within 180 days of persons with sentences increased pursuant to "Three Strikes" law if offenses for which they were sentenced or prior convictions used to increase sentences would no longer qualify under this measure as violent and/or serious felonies. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure would result in unknown, but significant net savings for the state. The state could face increased costs of several tens of millions of dollars for court-related activities and parole supervision, which could be offset by savings for the state ranging from several tens of millions of dollars to several hundreds of millions of dollars due to lower prison operating costs. The state might also be able to defer several hundreds of millions of dollars in capital outlay costs associated with delayed construction of additional prison beds. Possible increased initial costs to counties of as much as several tens of millions of dollars for jail-related costs which could be more than offset by future ongoing savings from fewer new cases challenging sentences issued under the Three Strikes law.

**Citizens Against Violent Crime**

12922 Harbor Boulevard, Garden Grove, CA 92840

(714) 780-8901, email: CAVC.Sam@att.net

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Sam H. Clauder II  
Citizens Against Violent Crime  
12922 Harbor Boulevard  
Garden Grove, CA 92840  
714.780.8901  
CAVC.Sam@att.net

Hon. Bill Lockyer  
Attorney General  
State Of California  
Department of Justice  
P.O. Box #944255  
Sacramento, California 94244-2550

**RECEIVED**  
NOV 13 2001

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

October 15, 2001

Attention: Connie Lemus, Initiative Coordinator

Re: Title and Summary for a Statutory Initiative

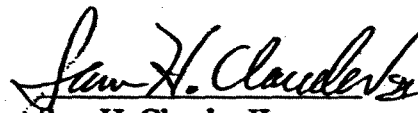
Mr. Attorney General:

Enclosed please find a proposed statutory initiative measure entitled **THE THREE STRIKES ACT OF 2002** to be submitted directly to the voters on the November, 2002, General Ballot.

We respectfully request that your office prepare a Title and Summary of said initiative in accordance with the provisions of the Election Code.

Sam H. Clauder II is the proponent for this initiative.  
Enclosed is a \$200.00 check made out to the State Of California as required.  
Thank you for your courtesy and cooperation in this matter.

Sincerely,

  
Sam H. Clauder II

enclosures

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*"Three Strikes and You're Out for Violent and Serious Felonies"*

**THE THREE STRIKES ACT OF 2002****INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS**

**TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:**

We, the undersigned, registered, qualified voters of the State of California, residents of the afore-described County (or City and County), hereby propose amendments to Penal Code Sections 667 and 1170.12, relating to the sentencing of individuals for a third serious or violent felony after having been convicted of two prior serious or violent felonies, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding primary or general election or at any special statewide election held prior to that primary or general election or as otherwise provided by law. The proposed statutory initiative reads as follows:

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1. TITLE**

This initiative shall be known and may be cited as the Three Strikes Act of 2002.

**SECTION 2. FINDINGS AND DECLARATIONS**

The People of the State of California do hereby find and declare that:

(a) Proposition 184 was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of offenders who commit serious and/or violent felonies;

(b) Proposition 184 has permitted prosecutors too much discretion in determining what criminal acts to prosecute as a second and/or third strike;

(c) Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars (\$800,000,000) per year.

**SECTION 3. PURPOSES**

The People of the State of California do hereby enact this measure to:

(a) Protect the people from criminals who commit serious and/or violent crimes;

(b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies, and who commit another serious and/or violent felony;

(c) Make no changes in existing law, other than to specify that only serious and/or violent felonies qualify for increased punishment due to prior strike convictions, and to require that no more than one strike be prosecuted for each criminal act;

(d) Reduce the cost to taxpayers for warehousing offenders who commit crimes that do not qualify for increased punishment according to this Act.

**SECTION 4. AMENDMENTS TO SECTION 667 OF THE PENAL CODE**  
(This format presents struck wording **bolded and underlined**, and new wording *italicized*.)

Section 667 of the Penal Code is hereby amended to read:

(a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious *and/or violent* felony who previously has been convicted of a serious *or violent* felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious *and/or violent* felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means **a serious felony** *any of the following serious felonies* listed in subdivision (c) of Section 1192.7:

(1) *Murder or voluntary manslaughter.*

(2) *Mayhem.*

(3) *Rape.*

(4) *Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

(5) *Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

(6) *Lewd or lascivious act on a child under the age of 14 years.*

(7) *Any felony punishable by death or imprisonment in the state prison for life.*

(8) *Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.*

(9) *Attempted murder.*

(10) *Assault with intent to commit rape, mayhem, sodomy, oral copulation, or robbery.*

(11) *Assault with a deadly weapon or instrument on a peace officer.*

(12) *Assault by a life prisoner on a non-inmate.*

(13) *Assault with a deadly weapon by an inmate.*

(16) *Exploding a destructive device or any explosive causing great bodily injury or mayhem.*

(17) *Exploding a destructive device or any explosive with intent to murder.*

(19) *Robbery or bank robbery.*

(20) *Kidnaping.*

(21) *Holding of a hostage by a person confined in a state prison.*

(25) *Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)*

(27) Carjacking.  
(28) Any violation of Section 288.5. (continuous sexual abuse of a child)  
(29) Any violation of Section 244. (use of a substance to commit bodily injury)  
(30) Assault with a deadly weapon or instrument on a firefighter.  
(31) Any violation of Section 264.1. (rape or penetration by a foreign object in concert)

(32) Any violation of Section 12022.53. (using a firearm in committing a crime)

**(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in paragraph (24) of subdivision (c) of Section 1192.7.**

(5) As used in this subdivision, "violent felony" means any of the following violent felonies listed in subdivision (c) of Section 667.5:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (6) Lewd acts on a child under the age of 14 years as defined in Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.
- (11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)
- (12) Attempted murder.
- (13) A violation of Section 12308. (explosion with intent to commit murder)
- (14) Kidnaping, in violation of subdivision (b) of Section 207.
- (15) Kidnaping, as punished in subdivision (b) of Section 208.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the Carjacking.
- (18) Any robbery of the first degree punishable pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.
- (19) A violation of Section 264.1. (rape or penetration by a foreign object in concert)

(b) It is the intent of the Legislature People of the State of California in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a *serious and/or violent* felony and have been previously convicted of serious and/or violent felony offenses.

(c) Notwithstanding any other *provision of law*, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent *serious and/or violent* felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of the sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious *and/or violent* felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a *serious and/or violent* felony shall be defined as *any of the following*:

(1) Any offense defined in *paragraph 4 of subdivision (c) of Section 667.5 (a) of this Section* as a violent serious felony or any offense defined in *paragraph 5 of subdivision (c) of Section 1192.7 (a) of this Section* as a serious violent felony in this state. The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true*:

(A) The juvenile was 16 sixteen years of age or older at the time he or she committed the prior offense.

(B) The prior offense is *described in paragraph (1) or (2) as a serious and/or violent felony, or is one of the following offenses listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony.*

(1) *Murder.*

(3) *Robbery while armed with a dangerous or deadly weapon.*

(4) *Rape with force or violence or threat of great bodily harm.*

(5) *Sodomy by force, violence, duress, menace, or threat of great bodily harm.*

(6) *Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.*

(7) *Oral copulation by force, violence, duress, menace, or threat of great bodily harm.*

(8) *Any offense specified in subdivision (a) of Section 289 of the Penal Code. (forced penetration with a foreign object)*

(9) *Kidnaping for ransom.*

(10) *Kidnaping in violation of subdivision (b) of Section 209 of the Penal Code.*

(11) *Kidnaping with bodily harm.*

(12) *Attempted murder.*

(13) *Assault with a firearm or destructive device.*

(14) *Assault by any means of force likely to produce great bodily injury.*

(15) *Discharge of a firearm into an inhabited or occupied building.*

(16) *Any offense described in Section 1203.09 of the Penal Code. (murder, robbery, kidnaping, burglary of the first degree, rape, assault, carjacking)*

(17) *Any offense described in Section 12022.5 (use of a firearm) or 12022.53 of the Penal Code. (murder, mayhem, kidnaping, robbery, carjacking, assault, assault with a firearm, rape, rape or penetration by a foreign object, forced sodomy, lewd act or oral copulation on a child, forced penetration by a foreign object, assault by prisoner, holding hostage by prisoner)*

(18) *Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code. (firearms, explosives, concealed weapons)*

(19) *Any felony offense described in Section 136.1 or 137 of the Penal Code. (threat to, or tampering with, a victim or witness)*

(22) *Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.*

- (23) *Torture, as described in Sections 206 and 206.1 of the Penal Code.*
- (24) *Aggravated mayhem, as described in Section 205 of the Penal Code.*
- (25) *Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.*
- (26) *Kidnaping, as punishable in Section 209.5 of the Penal Code.*
- (27) *The offense described in subdivision (c) of Section 12034 of the Penal Code. (drive-by shooting)*
- (28) *The offense described in Section 12308 of the Penal Code. (explosion with intent to commit murder)*

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious felony, as defined in paragraph 4 of subdivision (a) of this Section, or a violent felony, as defined in paragraph 5 of subdivision (a) of this Section*, and has two or more prior *serious and/or violent* felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater *greatest of the following*:

(i) Three times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.



(g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on June 30, 1993.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

**SECTION 5. AMENDMENTS TO SECTION 1170.12 OF THE PENAL CODE**  
(This format presents struck wording in **brackets and bold** and new wording in *italics*.)

Section 1170.12 of the Penal Code is amended to read:

*(a) It is the intent of the People of the State of California in enacting subdivisions (b) to (h), inclusive, to ensure longer prison sentences and greater punishment for those who commit a serious and/or violent felony and have been previously convicted of serious and/or violent felony offenses.*

**[(a)] (b)** Notwithstanding any other provision of law, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior **violent or serious** *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

**(b) (c)** Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a *serious and/or violent* felony shall be defined as:

**(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state.**

***(1) A conviction of any of the following serious felonies listed in subdivision (c) of Section 1192.7:***

*(1) Murder or voluntary manslaughter.*

*(2) Mayhem.*

*(3) Rape.*

*(4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

*(5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

*(6) Lewd or lascivious act on a child under the age of 14 years.*

*(7) Any felony punishable by death or imprisonment in the state prison for life.*

*(8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.*

*(9) Attempted murder.*

*(10) Assault with intent to commit rape, mayhem, sodomy, oral copulation, or robbery.*

*(11) Assault with a deadly weapon or instrument on a peace officer.*

*(12) Assault by a life prisoner on a non-inmate.*

*(13) Assault with a deadly weapon by an inmate.*

*(16) Exploding a destructive device or any explosive causing great bodily injury or mayhem.*

*(17) Exploding a destructive device or any explosive with intent to murder.*

*(19) Robbery or bank robbery.*

*(20) Kidnaping.*

*(21) Holding of a hostage by a person confined in a state prison.*

*(25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)*

*(27) Carjacking.*

*(28) Any violation of Section 288.5. (continuous sexual abuse of a child)*

*(29) Any violation of Section 244. (use of a substance to commit bodily injury)*

*(30) Assault with a deadly weapon or instrument on a firefighter.*

*(31) Any violation of Section 264.1. (rape or penetration by a foreign object in concert)*

(32) Any violation of Section 12022.53. (using a firearm in committing a crime)  
(2) A conviction of any of the following violent felonies listed in subdivision (c) of Section 667.5:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (6) Lewd acts on a child under the age of 14 years as defined in Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.
- (11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (12) Attempted murder.
- (13) A violation of Section 12308. (explosion with intent to commit murder)
- (14) Kidnaping, in violation of subdivision (b) of Section 207.
- (15) Kidnaping, as punished in subdivision (b) of Section 208.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the Carjacking.
- (18) Any robbery of the first degree punishable pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.
- (19) A violation of Section 264.1. (rape or penetration by a foreign object in concert)

The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of this section:

- (A) The suspension of imposition of judgment or sentence.
- (B) The stay of execution of sentence.
- (C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.
- (D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) (3) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular *serious and/or violent* felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular *serious and/or violent* felony as defined in *the preceding list of serious felonies in paragraph (1) and/or the preceding list of violent felonies in paragraph (2)*.

(3) (4) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true*:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and.

(B) The prior offense is (i) described in paragraph (1) or (2) as a serious and/or violent felony, or is one of the following offenses listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or (ii) listed in this subdivision as a felony, and:

(1) *Murder.*

(3) *Robbery while armed with a dangerous or deadly weapon.*

(4) *Rape with force or violence or threat of great bodily harm.*

(5) *Sodomy by force, violence, duress, menace, or threat of great bodily harm.*

(6) *Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal*

*Code.*

(7) *Oral copulation by force, violence, duress, menace, or threat of great bodily harm.*

(8) *Any offense specified in subdivision (a) of Section 289 of the Penal Code. (forced penetration with a foreign object)*

(9) *Kidnaping for ransom.*

(10) *Kidnaping in violation of subdivision (b) of Section 209 of the Penal Code.*

(11) *Kidnaping with bodily harm.*

(12) *Attempted murder.*

(13) *Assault with a firearm or destructive device.*

(14) *Assault by any means of force likely to produce great bodily injury.*

(15) *Discharge of a firearm into an inhabited or occupied building.*

(16) *Any offense described in Section 1203.09 of the Penal Code. (murder, robbery, kidnaping, burglary of the first degree, rape, assault, carjacking)*

(17) *Any offense described in Section 12022.5 or 12022.53 of the Penal Code.*

(18) *Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code. (firearms, explosives, concealed weapons)*

(19) *Any felony offense described in Section 136.1 or 137 of the Penal Code. (threat to, or tampering with, a victim or witness)*

(22) *Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.*

(23) *Torture, as described in Sections 206 and 206.1 of the Penal Code.*

(24) *Aggravated mayhem, as described in Section 205 of the Penal Code.*

(25) *Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.*

(26) Kidnaping, as punishable in Section 209.5 of the Penal Code.

(27) The offense described in subdivision (c) of Section 12034 of the Penal Code. (drive-by shooting)

(28) The offense described in Section 12308 of the Penal Code. (explosion with intent to commit murder)

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(c) (d) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious felony, as defined in paragraph 1 of subdivision (b) of this Section, or a violent felony, as defined in paragraph 2 of subdivision (b) of this Section, and* has two or more prior *serious and/or violent* felony convictions as defined in paragraph (1) of subdivision (d) (b) that have been pled and proved, the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater *greatest of the following*:

(i) three *Three* times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions, or.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (e) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

**(e) (f)** Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

**(g)** *All references to existing statutes in subdivisions (b) to (f), inclusive, are to statutes as they existed on June 30, 1993.*

**(h)** *If any provision of subdivisions (a) to (g), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.*

**(i)** *The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership and the Governor concurring, or by a statute that becomes effective only when approved by the electors.*

## **SECTION 6. PROVISIONS FOR RE-SENTENCING**

**(a)** Any individual sentenced under the prior three strikes law, including, but not limited to, Penal Code section 667, subdivision (e)(2), and Penal Code section 1170.12, subdivision (c)(2), for an enhanced conviction, that would not qualify for enhancement under this statute, shall qualify for re-sentencing according to the provisions of this Act.

**(b)** Those individuals qualifying to be re-sentenced shall be remanded to their court of origin and re-sentenced within no more than 180 days of this Act becoming effective, unless the qualifying individual personally waives in open court the 180 day time period.

**(c)** Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.

## **SECTION 7. LIBERAL CONSTRUCTION**

This Act is an exercise of the public power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate these purposes.

## **SECTION 8. SEVERABILITY**

The provisions of this Act are severable. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

## **SECTION 9. CONFLICTING MEASURES**

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this Act shall be self-executing and given the full force of law.

## **SECTION 10. EFFECTIVE DATE**

This Act shall become effective immediately upon its approval by the voters.

## **SECTION 11. SELF-EXECUTION**

This Act shall be self-executing.

## **SECTION 12. AMENDMENT**

This Act shall not be altered or amended except by one of the following:

- (a) By statute passed in each house of the Legislature, by roll call vote entered in the journal, with two-thirds of the membership and the Governor concurring, or
- (b) By statute passed in each house of the Legislature, by roll call vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot, and with a majority of the electors concurring, or
- (c) By statute that becomes effective when approved by a majority of the electors.

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**BILL JONES**  
*Secretary of State*  
*State of California*

January 11, 2002

**ELECTIONS DIVISION**

(916) 657-2166  
1500 - 11<sup>th</sup> STREET  
SACRAMENTO, CA 95814  
Voter Registration Hotline  
1-800-345-VOTE  
For Hearing and Speech Impaired  
Only  
1-800-833-8683  
e-mail: [comments@ss.ca.gov](mailto:comments@ss.ca.gov)

TO: ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS  
(02014)

FROM:

*Brianna Lierman*

BRIANNA LIERMAN  
ELECTIONS ANALYST

SUBJECT: INITIATIVE #949 [REVISED]

The Attorney General's office has provided a revised summary for the initiative entitled "*Three Strikes*" Law. *Limitation to Violent and Serious Felonies. Initiative Statute.* Enclosed is a new title and summary along with a new calendar and the text. This supersedes the previously issued title and summary dated January 9, 2002. Please note that the same Secretary of State number has been assigned to this initiative.

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**"THREE STRIKES" LAW. LIMITATION TO VIOLENT  
AND SERIOUS FELONIES. INITIATIVE STATUTE.**

The proponent of the above-named measure is:

Sam H. Clauder II  
12922 Harbor Boulevard  
Garden Grove, California 92840

(714) 780-8901



**#949**  
**"THREE STRIKES" LAW. LIMITATION TO VIOLENT**  
**AND SERIOUS FELONIES. INITIATIVE STATUTE. [Revised]**

**CIRCULATING AND FILING SCHEDULE**

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1. Minimum number of signatures required: ..... 419,260  
California Constitution, Article II, Section 8(b).
2. Official Summary Date:..... Wednesday, 01/09/02  
Elections Code section (EC§) 336
3. Petitions Sections:
  - a. First day Proponent can circulate Sections for  
signatures (EC §336) ..... Wednesday, 01/09/02
  - b. Last day Proponent can circulate and file  
with the county. All sections are to be filed at the  
same time within each county (EC §336, 9030(a)) ..... Monday, 06/10/02
  - c. Last day for county to determine total number of  
signatures affixed to petitions and to transmit total  
to the Secretary of State (EC §9030(b)),..... Thursday, 06/20/02\*  
  
(If the Proponent files the petition with the county on a date prior to 06/10/02,  
the county has eight working days from the filing of the petition to determine the  
total number of signatures affixed to the petition and to transmit the total to the  
Secretary of State) (EC §9030(b)).
  - d. Secretary of State determines whether the total number  
of signatures filed with all county clerks/registrars of  
voters meets the minimum number of required signatures,  
and notifies the counties (EC §9030(c)) ..... Saturday, 06/29/02\*
  - e. Last day for county to determine total number of qualified  
voters who signed the petition, and to transmit certificate  
with a blank copy of the petition to the Secretary of State  
(EC §9030(d)(e)) ..... Monday, 08/12/02

\* Date varies based on the date of county receipt of verification.

**INITIATIVE #949 [Revised]**  
**Circulating and Filing Schedule continued:**

---

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 06/29/02, the last day is no later than the thirtieth day after the county's receipt of notification). (EC §9030(d)(e)).

- f. If the signature count is more than 461,186 or less than 398,297 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 398,297 and 461,186 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures (EC §9030(f)(g); 9031(a)) ..... Thursday, 08/22/02\*
- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (EC §9031(b)(c)). ..... Monday, 10/07/02

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 08/22/02, the last day is no later than the thirtieth working day after the county's receipt of notification) (EC §9031(b)(c)).

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033)..... Friday, 10/11/02\*

**NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 5, 2002 GENERAL ELECTION:** This initiative must be certified for the ballot 131 days before the election (June 27, 2002). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions with county elections officials by April 18, 2002. If a 100% check of signatures is necessary, it is advised that the petitions be filed by February 27, 2002.

\* Date varies based on receipt of county certification.

## IMPORTANT POINTS

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- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).
- Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

**BILL LOCKYER**  
Attorney General

*State of California*  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
Public: (916) 445-9555

Facsimile: (916) 324-8835  
(916) 324-5490

January 11, 2002

Bill Jones  
Secretary of State  
1500 - 11<sup>th</sup> Street, 5<sup>th</sup> Floor  
Sacramento, California 95814

**FILED**  
In the office of the Secretary of State  
of the State of California

JAN 11 2002

RE: Initiative Title and Summary (**Revised**)  
SUBJECT: "THREE STRIKES" LAW. LIMITATION TO VIOLENT AND  
SERIOUS FELONIES. INITIATIVE STATUTE.  
FILE NO: SA2001RF0043

BILL JONES, Secretary of State  
By *Bianca Herman*  
Deputy Secretary of State

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our **revised** title and summary to the proponent of the above-identified proposed initiative.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our **revised** title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of service.

Sincerely,

TRICIA KNIGHT  
Initiative Coordinator

For **BILL LOCKYER**  
Attorney General

TK:cw  
Enclosures

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**“THREE STRIKES” LAW. LIMITATION TO VIOLENT AND SERIOUS FELONIES.**

**INITIATIVE STATUTE.** Amends "Three Strikes" law to require mandatory increased sentences only when current conviction is for specified violent and/or serious felony such as rape, robbery or murder. Provides that only prior convictions for specified violent and/or serious felonies qualify for second and third “strike” sentence increases. Requires re-sentencing within 180 days of persons with sentences increased pursuant to “Three Strikes” law if offenses for which they were sentenced or prior convictions used to increase sentences would no longer qualify under this measure as violent and/or serious felonies. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure would result in unknown, but significant net savings for the state. The state could face increased costs of several tens of millions of dollars for court-related activities and parole supervision, which could be offset by savings for the state ranging from several tens of millions of dollars to several hundreds of millions of dollars due to lower prison operating costs. The state might also be able to defer several hundreds of millions of dollars in capital outlay costs associated with delayed construction of additional prison beds. Possible increased initial costs to counties of as much as several tens of millions of dollars for jail-related costs which could be more than offset by future ongoing savings from fewer new cases challenging sentences issued under the Three Strikes law.

**Citizens Against Violent Crime**

12922 Harbor Boulevard, Garden Grove, CA 92840

(714) 780-8901, email: CAVC.Sam@att.net

---

Sam H. Clauder II  
Citizens Against Violent Crime  
12922 Harbor Boulevard  
Garden Grove, CA 92840  
714.780.8901  
CAVC.Sam@att.net

Hon. Bill Lockyer  
Attorney General  
State Of California  
Department of Justice  
P.O. Box #944255  
Sacramento, California 94244-2550

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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

October 15, 2001

Attention: Connie Lemus, Initiative Coordinator

Re: Title and Summary for a Statutory Initiative

Mr. Attorney General:

Enclosed please find a proposed statutory initiative measure entitled **THE THREE STRIKES ACT OF 2002** to be submitted directly to the voters on the November, 2002, General Ballot.

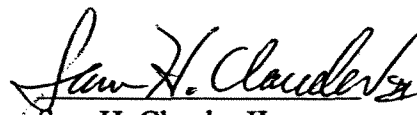
We respectfully request that your office prepare a Title and Summary of said initiative in accordance with the provisions of the Election Code.

Sam H. Clauder II is the proponent for this initiative.

Enclosed is a \$200.00 check made out to the State Of California as required.

Thank you for your courtesy and cooperation in this matter.

Sincerely,

  
Sam H. Clauder II

enclosures

---

*"Three Strikes and You're Out for Violent and Serious Felonies"*

**THE THREE STRIKES ACT OF 2002****INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS**

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of the State of California, residents of the afore-described County (or City and County), hereby propose amendments to Penal Code Sections 667 and 1170.12, relating to the sentencing of individuals for a third serious or violent felony after having been convicted of two prior serious or violent felonies, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding primary or general election or at any special statewide election held prior to that primary or general election or as otherwise provided by law. The proposed statutory initiative reads as follows:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1. TITLE**

This initiative shall be known and may be cited as the Three Strikes Act of 2002.

**SECTION 2. FINDINGS AND DECLARATIONS**

The People of the State of California do hereby find and declare that:

- (a) Proposition 184 was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of offenders who commit serious and/or violent felonies;
- (b) Proposition 184 has permitted prosecutors too much discretion in determining what criminal acts to prosecute as a second and/or third strike;
- (c) Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars (\$800,000,000) per year.

**SECTION 3. PURPOSES**

The People of the State of California do hereby enact this measure to:

- (a) Protect the people from criminals who commit serious and/or violent crimes;
- (b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies, and who commit another serious and/or violent felony;
- (c) Make no changes in existing law, other than to specify that only serious and/or violent felonies qualify for increased punishment due to prior strike convictions, and to require that no more than one strike be prosecuted for each criminal act;
- (d) Reduce the cost to taxpayers for warehousing offenders who commit crimes that do not qualify for increased punishment according to this Act.

**SECTION 4. AMENDMENTS TO SECTION 667 OF THE PENAL CODE**  
(This format presents struck wording **bolded and underlined**, and new wording *italicized*.)

Section 667 of the Penal Code is hereby amended to read:

(a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious *and/or violent* felony who previously has been convicted of a serious *or violent* felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious *and/or violent* felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means **a serious felony** *any of the following serious felonies* listed in subdivision (c) of Section 1192.7:

(1) *Murder or voluntary manslaughter.*

(2) *Mayhem.*

(3) *Rape.*

(4) *Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

(5) *Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

(6) *Lewd or lascivious act on a child under the age of 14 years.*

(7) *Any felony punishable by death or imprisonment in the state prison for life.*

(8) *Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.*

(9) *Attempted murder.*

(10) *Assault with intent to commit rape, mayhem, sodomy, oral copulation, or robbery.*

(11) *Assault with a deadly weapon or instrument on a peace officer.*

(12) *Assault by a life prisoner on a non-inmate.*

(13) *Assault with a deadly weapon by an inmate.*

(16) *Exploding a destructive device or any explosive causing great bodily injury or mayhem.*

(17) *Exploding a destructive device or any explosive with intent to murder.*

(19) *Robbery or bank robbery.*

(20) *Kidnaping.*

(21) *Holding of a hostage by a person confined in a state prison.*

(25) *Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)*



(27) Carjacking.  
(28) Any violation of Section 288.5. (continuous sexual abuse of a child)  
(29) Any violation of Section 244. (use of a substance to commit bodily injury)  
(30) Assault with a deadly weapon or instrument on a firefighter.  
(31) Any violation of Section 264.1. (rape or penetration by a foreign object in concert)

(32) Any violation of Section 12022.53. (using a firearm in committing a crime)

**(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in paragraph (24) of subdivision (c) of Section 1192.7.**

(5) As used in this subdivision, "violent felony" means any of the following violent felonies listed in subdivision (c) of Section 667.5:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (6) Lewd acts on a child under the age of 14 years as defined in Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.
- (11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)
- (12) Attempted murder.
- (13) A violation of Section 12308. (explosion with intent to commit murder)
- (14) Kidnaping, in violation of subdivision (b) of Section 207.
- (15) Kidnaping, as punished in subdivision (b) of Section 208.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the Carjacking.
- (18) Any robbery of the first degree punishable pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.
- (19) A violation of Section 264.1. (rape or penetration by a foreign object in concert)

(b) It is the intent of the Legislature *People of the State of California* in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a *serious and/or violent* felony and have been previously convicted of serious and/or violent felony offenses.

(c) Notwithstanding any other *provision of law*, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent *serious and/or violent* felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of *the* sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious *and/or violent* felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a *serious and/or violent* felony shall be defined as *any of the following*:

(1) Any offense defined in *paragraph 4 of subdivision (c) of Section 667.5 (a) of this Section* as a violent *serious* felony or any offense defined in *paragraph 5 of subdivision (c) of Section 1192.7 (a) of this Section* as a serious *violent* felony in this state. The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true*:

(A) The juvenile was 16 sixteen years of age or older at the time he or she committed the prior offense.

(B) The prior offense is *described in paragraph (1) or (2) as a serious and/or violent felony, or is one of the following offenses* listed in subdivision (b) of Section 707 of the Welfare and Institutions Code **or described in paragraph (1) or (2) as a felony.**

(1) *Murder.*

(3) *Robbery while armed with a dangerous or deadly weapon.*

(4) *Rape with force or violence or threat of great bodily harm.*

(5) *Sodomy by force, violence, duress, menace, or threat of great bodily harm.*

(6) *Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.*

(7) *Oral copulation by force, violence, duress, menace, or threat of great bodily harm.*

(8) *Any offense specified in subdivision (a) of Section 289 of the Penal Code. (forced penetration with a foreign object)*

(9) *Kidnaping for ransom.*

(10) *Kidnaping in violation of subdivision (b) of Section 209 of the Penal Code.*

(11) *Kidnaping with bodily harm.*

(12) *Attempted murder.*

(13) *Assault with a firearm or destructive device.*

(14) *Assault by any means of force likely to produce great bodily injury.*

(15) *Discharge of a firearm into an inhabited or occupied building.*

(16) *Any offense described in Section 1203.09 of the Penal Code. (murder, robbery, kidnaping, burglary of the first degree, rape, assault, carjacking)*

(17) *Any offense described in Section 12022.5 (use of a firearm) or 12022.53 of the Penal Code. (murder, mayhem, kidnaping, robbery, carjacking, assault, assault with a firearm, rape, rape or penetration by a foreign object, forced sodomy, lewd act or oral copulation on a child, forced penetration by a foreign object, assault by prisoner, holding hostage by prisoner)*

(18) *Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code. (firearms, explosives, concealed weapons)*

(19) *Any felony offense described in Section 136.1 or 137 of the Penal Code. (threat to, or tampering with, a victim or witness)*

(22) *Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.*

- (23) *Torture, as described in Sections 206 and 206.1 of the Penal Code.*
- (24) *Aggravated mayhem, as described in Section 205 of the Penal Code.*
- (25) *Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.*
- (26) *Kidnaping, as punishable in Section 209.5 of the Penal Code.*
- (27) *The offense described in subdivision (c) of Section 12034 of the Penal Code. (drive-by shooting)*
- (28) *The offense described in Section 12308 of the Penal Code. (explosion with intent to commit murder)*

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious felony, as defined in paragraph 4 of subdivision (a) of this Section, or a violent felony, as defined in paragraph 5 of subdivision (a) of this Section*, and has two or more prior *serious and/or violent* felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater greatest of the following:

(i) Three times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on June 30, 1993.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

## SECTION 5. AMENDMENTS TO SECTION 1170.12 OF THE PENAL CODE

(This format presents struck wording in **brackets and bold** and new wording in *italics*.)

Section 1170.12 of the Penal Code is amended to read:

*(a) It is the intent of the People of the State of California in enacting subdivisions (b) to (h), inclusive, to ensure longer prison sentences and greater punishment for those who commit a serious and/or violent felony and have been previously convicted of serious and/or violent felony offenses.*

**[(a)]** *(b)* Notwithstanding any other provision of law, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior **violent or serious** *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

**(b) (c)** Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a *serious and/or violent* felony shall be defined as:

**(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state.**

*(1) A conviction of any of the following serious felonies listed in subdivision (c) of Section 1192.7:*

*(1) Murder or voluntary manslaughter.*

*(2) Mayhem.*

*(3) Rape.*

*(4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

*(5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

*(6) Lewd or lascivious act on a child under the age of 14 years.*

*(7) Any felony punishable by death or imprisonment in the state prison for life.*

*(8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.*

*(9) Attempted murder.*

*(10) Assault with intent to commit rape, mayhem, sodomy, oral copulation, or robbery.*

*(11) Assault with a deadly weapon or instrument on a peace officer.*

*(12) Assault by a life prisoner on a non-inmate.*

*(13) Assault with a deadly weapon by an inmate.*

*(16) Exploding a destructive device or any explosive causing great bodily injury or mayhem.*

*(17) Exploding a destructive device or any explosive with intent to murder.*

*(19) Robbery or bank robbery.*

*(20) Kidnaping.*

*(21) Holding of a hostage by a person confined in a state prison.*

*(25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)*

*(27) Carjacking.*

*(28) Any violation of Section 288.5. (continuous sexual abuse of a child)*

*(29) Any violation of Section 244. (use of a substance to commit bodily injury)*

*(30) Assault with a deadly weapon or instrument on a firefighter.*

*(31) Any violation of Section 264.1. (rape or penetration by a foreign object in concert)*

(32) Any violation of Section 12022.53. (using a firearm in committing a crime)  
(2) A conviction of any of the following violent felonies listed in subdivision (c) of Section 667.5:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (6) Lewd acts on a child under the age of 14 years as defined in Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.
- (11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (12) Attempted murder.
- (13) A violation of Section 12308. (explosion with intent to commit murder)
- (14) Kidnaping, in violation of subdivision (b) of Section 207.
- (15) Kidnaping, as punished in subdivision (b) of Section 208.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the Carjacking.
- (18) Any robbery of the first degree punishable pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.
- (19) A violation of Section 264.1. (rape or penetration by a foreign object in concert)

The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of this section:

- (A) The suspension of imposition of judgment or sentence.
- (B) The stay of execution of sentence.
- (C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.
- (D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) (3) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular *serious and/or violent* felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular *serious and/or violent* felony as defined in *the preceding list of serious felonies in paragraph (1) and/or the preceding list of violent felonies in paragraph (2)*.

(3) (4) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true*:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and.

(B) The prior offense is (i) described in paragraph (1) or (2) as a serious and/or violent felony, or is one of the following offenses listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or (ii) listed in this subdivision as a felony, and:

(1) Murder.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal

Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code. (forced penetration with a foreign object)

(9) Kidnaping for ransom.

(10) Kidnaping in violation of subdivision (b) of Section 209 of the Penal Code.

(11) Kidnaping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code. (murder, robbery, kidnaping, burglary of the first degree, rape, assault, carjacking)

(17) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code. (firearms, explosives, concealed weapons)

(19) Any felony offense described in Section 136.1 or 137 of the Penal Code. (threat to, or tampering with, a victim or witness)

(22) Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture, as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.



(26) *Kidnaping, as punishable in Section 209.5 of the Penal Code.*

(27) *The offense described in subdivision (c) of Section 12034 of the Penal Code. (drive-by shooting)*

(28) *The offense described in Section 12308 of the Penal Code. (explosion with intent to commit murder)*

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(c) (d) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious felony, as defined in paragraph 1 of subdivision (b) of this Section, or a violent felony, as defined in paragraph 2 of subdivision (b) of this Section, and* has two or more prior *serious and/or violent* felony convictions as defined in paragraph (1) of subdivision (d) (b) that have been pled and proved, the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater greatest of the following:

(i) three Three times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions, or.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (e) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(e) (f) Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(g) *All references to existing statutes in subdivisions (b) to (f), inclusive, are to statutes as they existed on June 30, 1993.*

(h) *If any provision of subdivisions (a) to (g), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.*

(i) *The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership and the Governor concurring, or by a statute that becomes effective only when approved by the electors.*

## **SECTION 6. PROVISIONS FOR RE-SENTENCING**

(a) Any individual sentenced under the prior three strikes law, including, but not limited to, Penal Code section 667, subdivision (e)(2), and Penal Code section 1170.12, subdivision (c)(2), for an enhanced conviction, that would not qualify for enhancement under this statute, shall qualify for re-sentencing according to the provisions of this Act.

(b) Those individuals qualifying to be re-sentenced shall be remanded to their court of origin and re-sentenced within no more than 180 days of this Act becoming effective, unless the qualifying individual personally waives in open court the 180 day time period.

(c) Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.

## **SECTION 7. LIBERAL CONSTRUCTION**

This Act is an exercise of the public power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate these purposes.

## **SECTION 8. SEVERABILITY**

The provisions of this Act are severable. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

## **SECTION 9. CONFLICTING MEASURES**

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this Act shall be self-executing and given the full force of law.

## **SECTION 10. EFFECTIVE DATE**

This Act shall become effective immediately upon its approval by the voters.

## **SECTION 11. SELF-EXECUTION**

This Act shall be self-executing.

## **SECTION 12. AMENDMENT**

This Act shall not be altered or amended except by one of the following:

- (a) By statute passed in each house of the Legislature, by roll call vote entered in the journal, with two-thirds of the membership and the Governor concurring, or
- (b) By statute passed in each house of the Legislature, by roll call vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot, and with a majority of the electors concurring, or
- (c) By statute that becomes effective when approved by a majority of the electors.

**DIVISIONS:**

Archives  
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Elections  
Information Technology  
Limited Partnership  
Management Services  
Notary Public  
Political Reform  
Uniform Commercial Code



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**BILL JONES**  
*Secretary of State*  
*State of California*

January 9, 2002

**ELECTIONS DIVISION**

(916) 657-2166  
1500 - 11<sup>th</sup> STREET  
SACRAMENTO, CA 95814  
Voter Registration Hotline  
1-800-345-VOTE  
For Hearing and Speech Impaired  
Only  
1-800-833-8683  
e-mail: [comments@ss.ca.gov](mailto:comments@ss.ca.gov)

TO: ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENTS  
(02013)

FROM: *Brianna Lierman*  
BRIANNA LIERMAN  
ELECTIONS ANALYST

SUBJECT: **INITIATIVE #949**

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**"THREE STRIKES" LAW. LIMITATION TO VIOLENT  
AND SERIOUS FELONIES. INITIATIVE STATUTE.**

The proponent of the above-named measure is:

Sam H. Clauder II  
12922 Harbor Boulevard  
Garden Grove, California 92840

(714) 780-8901

**#949**  
**"THREE STRIKES" LAW. LIMITATION TO VIOLENT**  
**AND SERIOUS FELONIES. INITIATIVE STATUTE.**

**CIRCULATING AND FILING SCHEDULE**

---

1. Minimum number of signatures required: ..... 419,260  
California Constitution, Article II, Section 8(b)
2. Official Summary Date:..... Wednesday, 01/09/02  
Elections Code section (EC§) 336
3. Petitions Sections:
  - a. First day Proponent can circulate Sections for  
signatures (EC §336) ..... Wednesday, 01/09/02
  - b. Last day Proponent can circulate and file  
with the county. All sections are to be filed at the  
same time within each county (EC §336, 9030(a)) ..... Monday, 06/10/02\*
  - c. Last day for county to determine total number of  
signatures affixed to petitions and to transmit total  
to the Secretary of State (EC §9030(b))..... Thursday, 06/20/02\*

(If the Proponent files the petition with the county on a date prior to 06/10/02,  
the county has eight working days from the filing of the petition to determine the  
total number of signatures affixed to the petition and to transmit the total to the  
Secretary of State) (EC §9030(b)).

  - d. Secretary of State determines whether the total number  
of signatures filed with all county clerks/registrars of  
voters meets the minimum number of required signatures,  
and notifies the counties (EC §9030(c)) ..... Saturday, 06/29/02\*\*
  - e. Last day for county to determine total number of qualified  
voters who signed the petition, and to transmit certificate  
with a blank copy of the petition to the Secretary of State  
(EC §9030(d)(e)) ..... Monday, 08/12/02

\* Date adjusted for official deadline, which falls on a Saturday (EC § 15).

\*\* Date varies based on the date of county receipt of verification.

## INITIATIVE #949

### Circulating and Filing Schedule continued:

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(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 06/29/02, the last day is no later than the thirtieth day after the county's receipt of notification). (EC §9030(d)(e)).

- f. If the signature count is more than 461,186 or less than 398,297 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 398,297 and 461,186 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of **all** signatures (EC §9030(f)(g); 9031(a)) ..... Thursday, 08/22/02\*

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (EC §9031(b)(c)).' ..... Monday, 10/07/02

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 08/22/02, the last day is no later than the thirtieth working day after the county's receipt of notification) (EC §9031(b)(c)).

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033)..... Friday, 10/11/02\*

**NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 5, 2002 GENERAL ELECTION:** This initiative must be certified for the ballot 131 days before the election (June 27, 2002). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions with county elections officials by April 18, 2002. If a 100% check of signatures is necessary, it is advised that the petitions be filed by February 27, 2002.

\* Date varies based on receipt of county certification.

## IMPORTANT POINTS

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- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980).
- Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

**BILL LOCKYER**  
Attorney General

**State of California**  
**DEPARTMENT OF JUSTICE**



1300 I STREET, SUITE 125

P.O. BOX 944255  
SACRAMENTO, CA 94244-2550  
Public: (916) 445-9555

Facsimile: (916) 324-8835  
(916) 324-5490

January 9, 2002

**FILED**  
In the office of the Secretary of State  
of the State of California

JAN 09 2002

Bill Jones  
Secretary of State  
1500 - 11<sup>th</sup> Street, 5<sup>th</sup> Floor  
Sacramento, California 95814

BILL JONES, Secretary of State  
By Bianna DiGiorgio  
Deputy Secretary of State

RE: Initiative Title and Summary  
SUBJECT: "THREE STRIKES" LAW. LIMITATION TO VIOLENT AND  
SERIOUS FELONIES. INITIATIVE STATUTE.  
FILE NO: SA2001RF0043

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed our title and summary to the proponent of the above-identified proposed initiative.

Enclosed is a copy of our transmittal letter to the proponent, a copy of our title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the name and address of the proponent is as stated on the declaration of service.

Sincerely,

*Tricia Knight*  
TRICIA KNIGHT  
Initiative Coordinator

For BILL LOCKYER  
Attorney General

TK:cw  
Enclosures



The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**“THREE STRIKES” LAW. LIMITATION TO VIOLENT AND SERIOUS FELONIES.**

INITIATIVE STATUTE. Amends "Three Strikes" law to require mandatory increased sentences only when current conviction is for specified violent and/or serious felony such as rape, robbery or burglary. Provides that only prior convictions for specified violent and/or serious felonies qualify for second and third “strike” sentence increases. Requires re-sentencing within 180 days of persons with sentences increased pursuant to “Three Strikes” law if offenses for which they were sentenced or prior convictions used to increase sentences would no longer qualify under this measure as violent and/or serious felonies. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: This measure would result in unknown, but significant net savings for the state. The state could face increased costs of several tens of millions of dollars for court-related activities and parole supervision, which could be offset by savings for the state ranging from several tens of millions of dollars to several hundreds of millions of dollars due to lower prison operating costs. The state might also be able to defer several hundreds of millions of dollars in capital outlay costs associated with delayed construction of additional prison beds. Possible increased initial costs to counties of as much as several tens of millions of dollars for jail-related costs which could be more than offset by future ongoing savings from fewer new cases challenging sentences issued under the Three Strikes law.

**Citizens Against Violent Crime**

12922 Harbor Boulevard, Garden Grove, CA 92840

(714) 780-8901, email: CAVC.Sam@att.net

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Sam H. Clauder II  
Citizens Against Violent Crime  
12922 Harbor Boulevard  
Garden Grove, CA 92840  
714.780.8901  
CAVC.Sam@att.net

Hon. Bill Lockyer  
Attorney General  
State Of California  
Department of Justice  
P.O. Box #944255  
Sacramento, California 94244-2550

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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

October 15, 2001

Attention: Connie Lemus, Initiative Coordinator

Re: Title and Summary for a Statutory Initiative

Mr. Attorney General:

Enclosed please find a proposed statutory initiative measure entitled **THE THREE STRIKES ACT OF 2002** to be submitted directly to the voters on the November, 2002, General Ballot.

We respectfully request that your office prepare a Title and Summary of said initiative in accordance with the provisions of the Election Code.

Sam H. Clauder II is the proponent for this initiative.

Enclosed is a \$200.00 check made out to the State Of California as required.

Thank you for your courtesy and cooperation in this matter.

Sincerely,

  
Sam H. Clauder II

enclosures

---

*"Three Strikes and You're Out for Violent and Serious Felonies"*

**THE THREE STRIKES ACT OF 2002****INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS**

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of the State of California, residents of the afore-described County (or City and County), hereby propose amendments to Penal Code Sections 667 and 1170.12, relating to the sentencing of individuals for a third serious or violent felony after having been convicted of two prior serious or violent felonies, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding primary or general election or at any special statewide election held prior to that primary or general election or as otherwise provided by law. The proposed statutory initiative reads as follows:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1. TITLE**

This initiative shall be known and may be cited as the Three Strikes Act of 2002.

**SECTION 2. FINDINGS AND DECLARATIONS**

The People of the State of California do hereby find and declare that:

(a) Proposition 184 was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of offenders who commit serious and/or violent felonies;

(b) Proposition 184 has permitted prosecutors too much discretion in determining what criminal acts to prosecute as a second and/or third strike;

(c) Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars (\$800,000,000) per year.

**SECTION 3. PURPOSES**

The People of the State of California do hereby enact this measure to:

(a) Protect the people from criminals who commit serious and/or violent crimes;

(b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies, and who commit another serious and/or violent felony;

(c) Make no changes in existing law, other than to specify that only serious and/or violent felonies qualify for increased punishment due to prior strike convictions, and to require that no more than one strike be prosecuted for each criminal act;

(d) Reduce the cost to taxpayers for warehousing offenders who commit crimes that do not qualify for increased punishment according to this Act.

**SECTION 4. AMENDMENTS TO SECTION 667 OF THE PENAL CODE**  
(This format presents struck wording **bolded and underlined**, and new wording *italicized*.)

Section 667 of the Penal Code is hereby amended to read:

(a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious *and/or violent* felony who previously has been convicted of a serious *or violent* felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious *and/or violent* felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means **a serious felony** *any of the following serious felonies* listed in subdivision (c) of Section 1192.7:

(1) *Murder or voluntary manslaughter.*

(2) *Mayhem.*

(3) *Rape.*

(4) *Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

(5) *Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*

(6) *Lewd or lascivious act on a child under the age of 14 years.*

(7) *Any felony punishable by death or imprisonment in the state prison for life.*

(8) *Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.*

(9) *Attempted murder.*

(10) *Assault with intent to commit rape, mayhem, sodomy, oral copulation, or robbery.*

(11) *Assault with a deadly weapon or instrument on a peace officer.*

(12) *Assault by a life prisoner on a non-inmate.*

(13) *Assault with a deadly weapon by an inmate.*

(16) *Exploding a destructive device or any explosive causing great bodily injury or mayhem.*

(17) *Exploding a destructive device or any explosive with intent to murder.*

(19) *Robbery or bank robbery.*

(20) *Kidnaping.*

(21) *Holding of a hostage by a person confined in a state prison.*

(25) *Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)*

- (27) Carjacking.
- (28) Any violation of Section 288.5. (continuous sexual abuse of a child)
- (29) Any violation of Section 244. (use of a substance to commit bodily injury)
- (30) Assault with a deadly weapon or instrument on a firefighter.
- (31) Any violation of Section 264.1. (rape or penetration by a foreign object in concert)

(32) Any violation of Section 12022.53. (using a firearm in committing a crime)

**(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in paragraph (24) of subdivision (c) of Section 1192.7.**

(5) As used in this subdivision, "violent felony" means any of the following violent felonies listed in subdivision (c) of Section 667.5:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (6) Lewd acts on a child under the age of 14 years as defined in Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.
- (11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)
- (12) Attempted murder.
- (13) A violation of Section 12308. (explosion with intent to commit murder)
- (14) Kidnaping, in violation of subdivision (b) of Section 207.
- (15) Kidnaping, as punished in subdivision (b) of Section 208.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the Carjacking.
- (18) Any robbery of the first degree pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.
- (19) A violation of Section 264.1. (rape or penetration by a foreign object in concert)

(b) It is the intent of the Legislature *People of the State of California* in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a *serious and/or violent* felony and have been previously convicted of serious and/or violent felony offenses.

(c) Notwithstanding any other *provision of law*, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent *serious and/or violent* felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of *the* sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious *and/or violent* felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a *serious and/or violent* felony shall be defined as *any of the following*:

(1) Any offense defined in *paragraph 4 of subdivision (c) of Section 667.5 (a) of this Section* as a violent *serious* felony or any offense defined in *paragraph 5 of subdivision (c) of Section 1192.7 (a) of this Section* as a serious *violent* felony in this state. The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true*:

(A) The juvenile was 16 sixteen years of age or older at the time he or she committed the prior offense.

(B) The prior offense is *described in paragraph (1) or (2) as a serious and/or violent felony, or is one of the following offenses* listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony.

(1) *Murder.*

(3) *Robbery while armed with a dangerous or deadly weapon.*

(4) *Rape with force or violence or threat of great bodily harm.*

(5) *Sodomy by force, violence, duress, menace, or threat of great bodily harm.*

(6) *Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.*

(7) *Oral copulation by force, violence, duress, menace, or threat of great bodily harm.*

(8) *Any offense specified in subdivision (a) of Section 289 of the Penal Code. (forced penetration with a foreign object)*

(9) *Kidnaping for ransom.*

(10) *Kidnaping in violation of subdivision (b) of Section 209 of the Penal Code.*

(11) *Kidnaping with bodily harm.*

(12) *Attempted murder.*

(13) *Assault with a firearm or destructive device.*

(14) *Assault by any means of force likely to produce great bodily injury.*

(15) *Discharge of a firearm into an inhabited or occupied building.*

(16) *Any offense described in Section 1203.09 of the Penal Code. (murder, robbery, kidnaping, burglary of the first degree, rape, assault, carjacking)*

(17) *Any offense described in Section 12022.5 (use of a firearm) or 12022.53 of the Penal Code. (murder, mayhem, kidnaping, robbery, carjacking, assault, assault with a firearm, rape, rape or penetration by a foreign object, forced sodomy, lewd act or oral copulation on a child, forced penetration by a foreign object, assault by prisoner, holding hostage by prisoner)*

(18) *Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code. (firearms, explosives, concealed weapons)*

(19) *Any felony offense described in Section 136.1 or 137 of the Penal Code. (threat to, or tampering with, a victim or witness)*

(22) *Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.*

- (23) *Torture, as described in Sections 206 and 206.1 of the Penal Code.*
- (24) *Aggravated mayhem, as described in Section 205 of the Penal Code.*
- (25) *Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.*
- (26) *Kidnaping, as punishable in Section 209.5 of the Penal Code.*
- (27) *The offense described in subdivision (c) of Section 12034 of the Penal Code. (drive-by shooting)*
- (28) *The offense described in Section 12308 of the Penal Code. (explosion with intent to commit murder)*

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious felony, as defined in paragraph 4 of subdivision (a) of this Section, or a violent felony, as defined in paragraph 5 of subdivision (a) of this Section*, and has two or more prior *serious and/or violent* felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater greatest of the following:

(i) Three times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.



(g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on June 30, 1993.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

## **SECTION 5. AMENDMENTS TO SECTION 1170.12 OF THE PENAL CODE**

(This format presents struck wording in **brackets and bold** and new wording in *italics*.)

Section 1170.12 of the Penal Code is amended to read:

*(a) It is the intent of the People of the State of California in enacting subdivisions (b) to (h), inclusive, to ensure longer prison sentences and greater punishment for those who commit a serious and/or violent felony and have been previously convicted of serious and/or violent felony offenses.*

**[(a)]** (b) Notwithstanding any other provision of law, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior **violent or serious** *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one *serious and/or violent* felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

**(b) (c)** Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a *serious and/or violent* felony shall be defined as:

**(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state.**

*(1) A conviction of any of the following serious felonies listed in subdivision (c) of Section 1192.7:*

- (1) Murder or voluntary manslaughter.*
- (2) Mayhem.*
- (3) Rape.*
- (4) Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*
- (5) Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.*
- (6) Lewd or lascivious act on a child under the age of 14 years.*
- (7) Any felony punishable by death or imprisonment in the state prison for life.*
- (8) Any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm.*
- (9) Attempted murder.*
- (10) Assault with intent to commit rape, mayhem, sodomy, oral copulation, or robbery.*
- (11) Assault with a deadly weapon or instrument on a peace officer.*
- (12) Assault by a life prisoner on a non-inmate.*
- (13) Assault with a deadly weapon by an inmate.*
- (16) Exploding a destructive device or any explosive causing great bodily injury or mayhem.*
- (17) Exploding a destructive device or any explosive with intent to murder.*
- (19) Robbery or bank robbery.*
- (20) Kidnaping.*
- (21) Holding of a hostage by a person confined in a state prison.*
- (25) Any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person. (forced penetration with a foreign object)*
- (27) Carjacking.*
- (28) Any violation of Section 288.5. (continuous sexual abuse of a child)*
- (29) Any violation of Section 244. (use of a substance to commit bodily injury)*
- (30) Assault with a deadly weapon or instrument on a firefighter.*
- (31) Any violation of Section 264.1. (rape or penetration by a foreign object in concert)*

(32) *Any violation of Section 12022.53. (using a firearm in committing a crime)*  
(2) *A conviction of any of the following violent felonies listed in subdivision (c) of Section 667.5:*

- (1) *Murder or voluntary manslaughter.*
- (2) *Mayhem.*
- (3) *Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.*
- (4) *Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.*
- (5) *Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.*
- (6) *Lewd acts on a child under the age of 14 years as defined in Section 288.*
- (7) *Any felony punishable by death or imprisonment in the state prison for life.*
- (8) *Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.*
- (11) *The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.*
- (12) *Attempted murder.*
- (13) *A violation of Section 12308. (explosion with intent to commit murder)*
- (14) *Kidnaping, in violation of subdivision (b) of Section 207.*
- (15) *Kidnaping, as punished in subdivision (b) of Section 208.*
- (16) *Continuous sexual abuse of a child, in violation of Section 288.5.*
- (17) *Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the Carjacking.*
- (18) *Any robbery of the first degree punishable pursuant to subparagraph (A) of paragraph (1) of subdivision (a) of Section 213.*
- (19) *A violation of Section 264.1. (rape or penetration by a foreign object in concert)*

The determination of whether a prior conviction is a prior *serious and/or violent* felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior *serious and/or violent* felony for purposes of this section:

- (A) The suspension of imposition of judgment or sentence.
- (B) The stay of execution of sentence.
- (C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.
- (D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) (3) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular *serious and/or violent* felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular *serious and/or violent* felony as defined in the *preceding list of serious felonies in paragraph (1) and/or the preceding list of violent felonies in paragraph (2)*.

(3) (4) A prior juvenile adjudication shall constitute a prior *serious and/or violent* felony conviction for purposes of sentence enhancement if *all of the following are true*:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and.

(B) The prior offense is (i) described in paragraph (1) or (2) as a serious and/or violent felony, or is one of the following offenses listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or (ii) listed in this subdivision as a felony, and:

(1) *Murder.*

(3) *Robbery while armed with a dangerous or deadly weapon.*

(4) *Rape with force or violence or threat of great bodily harm.*

(5) *Sodomy by force, violence, duress, menace, or threat of great bodily harm.*

(6) *Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.*

(7) *Oral copulation by force, violence, duress, menace, or threat of great bodily harm.*

(8) *Any offense specified in subdivision (a) of Section 289 of the Penal Code. (forced penetration with a foreign object)*

(9) *Kidnaping for ransom.*

(10) *Kidnaping in violation of subdivision (b) of Section 209 of the Penal Code.*

(11) *Kidnaping with bodily harm.*

(12) *Attempted murder.*

(13) *Assault with a firearm or destructive device.*

(14) *Assault by any means of force likely to produce great bodily injury.*

(15) *Discharge of a firearm into an inhabited or occupied building.*

(16) *Any offense described in Section 1203.09 of the Penal Code. (murder, robbery, kidnaping, burglary of the first degree, rape, assault, carjacking)*

(17) *Any offense described in Section 12022.5 or 12022.53 of the Penal Code.*

(18) *Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code. (firearms, explosives, concealed weapons)*

(19) *Any felony offense described in Section 136.1 or 137 of the Penal Code. (threat to, or tampering with, a victim or witness)*

(22) *Escape, by the use of force or violence, from any county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 where great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.*

(23) *Torture, as described in Sections 206 and 206.1 of the Penal Code.*

(24) *Aggravated mayhem, as described in Section 205 of the Penal Code.*

(25) *Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.*

(26) *Kidnaping, as punishable in Section 209.5 of the Penal Code.*

(27) *The offense described in subdivision (c) of Section 12034 of the Penal Code. (drive-by shooting)*

(28) *The offense described in Section 12308 of the Penal Code. (explosion with intent to commit murder)*

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(c) (d) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior *serious and/or violent* felony conviction:

(1) If a defendant has one prior *serious and/or violent* felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current *serious and/or violent* felony conviction.

(2) (A) If a defendant has *been convicted of a serious felony, as defined in paragraph 1 of subdivision (b) of this Section, or a violent felony, as defined in paragraph 2 of subdivision (b) of this Section, and* has two or more prior *serious and/or violent* felony convictions as defined in paragraph (1) of subdivision (d) (b) that have been pled and proved, the term for the current *serious and/or violent* felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater greatest of the following:

(i) three Three times the term otherwise provided as punishment for each current *serious and/or violent* felony conviction subsequent to the two or more prior *serious and/or violent* felony convictions, or.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (e) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior *serious and/or violent* felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior *serious and/or violent* felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(e) (f) Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(g) *All references to existing statutes in subdivisions (b) to (f), inclusive, are to statutes as they existed on June 30, 1993.*

(h) *If any provision of subdivisions (a) to (g), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.*

(i) *The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call vote entered in the journal, two-thirds of the membership and the Governor concurring, or by a statute that becomes effective only when approved by the electors.*

## **SECTION 6. PROVISIONS FOR RE-SENTENCING**

(a) Any individual sentenced under the prior three strikes law, including, but not limited to, Penal Code section 667, subdivision (e)(2), and Penal Code section 1170.12, subdivision (c)(2), for an enhanced conviction, that would not qualify for enhancement under this statute, shall qualify for re-sentencing according to the provisions of this Act.

(b) Those individuals qualifying to be re-sentenced shall be remanded to their court of origin and re-sentenced within no more than 180 days of this Act becoming effective, unless the qualifying individual personally waives in open court the 180 day time period.

(c) Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.

## **SECTION 7. LIBERAL CONSTRUCTION**

This Act is an exercise of the public power of the state for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate these purposes.

## **SECTION 8. SEVERABILITY**

The provisions of this Act are severable. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 9.            CONFLICTING MEASURES**

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this Act shall be self-executing and given the full force of law.

**SECTION 10.        EFFECTIVE DATE**

This Act shall become effective immediately upon its approval by the voters.

**SECTION 11.        SELF-EXECUTION**

This Act shall be self-executing.

**SECTION 12.        AMENDMENT**

This Act shall not be altered or amended except by one of the following:

- (a) By statute passed in each house of the Legislature, by roll call vote entered in the journal, with two-thirds of the membership and the Governor concurring, or
- (b) By statute passed in each house of the Legislature, by roll call vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot, and with a majority of the electors concurring, or
- (c) By statute that becomes effective when approved by a majority of the electors.